

SECTION 3: LEGAL SANCTIONS

HISTORICAL OVERVIEW OF WISCONSIN DRINKING DRIVING LAW

1849 Chapter 33, section 3, Laws of 1849, prohibited the employment of any person to drive a coach or vehicle who is addicted to drunkenness, or to the excessive use of intoxicating liquors. A similar statute, sec. 364.64, Stats., still exists in Wisconsin law.

1911 Chapter 600, Laws of 1911, published July 15, 1911, prohibits operating, riding or driving a motor vehicle while intoxicated. This appears to be the first reference in Wisconsin Statutes to the actual offense of drunk driving. Also note that riding was included as a part of the offense in 1911. The penalty for first offense was a fine of not less than \$10 nor more than \$50. The penalty for second and subsequent offenses was a fine of not less than \$25 nor more than \$100, or imprisonment for 60 days, or both. See Chapter 73a, s.1636-49 and 54, 1911 Wisconsin Statutes pp. 1092-93.

1921 Chapter 761 section. 1636-49, 1921 Wisconsin Statutes, p.1254, used the same language, “no intoxicated person shall operate, ride, or drive any automobile...”. The penalty section in 1921, section 1636-54, p. 1259, had been changed to read: “Any person who shall operate, ride, or drive any automobile...upon or along any public highway of this state, while intoxicated, shall be punished by a fine of not more than \$100 or by imprisonment in the county jail for not more than six months, or by such fine and imprisonment.” There was no statutory reference to second and subsequent offenses.

1923 By 1923, the drunk driving provisions were included in the “Law of the Road,” which had been recodified in Chapter 85, Wisconsin Statutes. By 1923, the provision making riding while intoxicated illegal had been eliminated. Section 85.08, 1923 Wisconsin Statutes, p. 957, read as follows: “[A]nd no intoxicated person shall operate any automobile...”.

Section 85.22, 1923 Wisconsin Statutes, p. 962, provided for the following penalty: “Any person who violates...85.08 shall be fined not less than \$10 nor more than \$100, and for a second or subsequent violation thereof in any year shall be fined not less than \$50 nor more than \$500 or imprisoned not exceeding sixty days, or both.”

1933 By 1933, the drunk driving provisions had been moved to sec. 85.13, 1933 Wisconsin Statutes, p. 1047. Sec. 85.13, Stats., read as follows: “It shall be unlawful for any person who is a habitual user of narcotic drugs, or who is subject to epilepsy, or any person under the influence of an intoxicating liquor or narcotic drug, to operate any vehicle upon any highway.” Note that the prohibition was once again any vehicle. Section 85.91(3), 1933 Wisconsin Statutes, p. 1061, provided for the following penalty. Any person violating s. 85.13 “...shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished in addition to any other penalty provided by law, by a fine not to exceed \$100 or by imprisonment...for not more than six months, or by both such fine and imprisonment. The operator’s license of such person may also be revoked or suspended for a period not to exceed one year; and for the second or each subsequent conviction within one year thereafter the person shall be punished by a fine not to exceed \$200, or by such imprisonment not to exceed one year, or both...and in addition thereto by suspension or revocation of the operator’s license for not to exceed one year.” This is the first reference in the law to suspension/revocation of the drivers license as a penalty for drunk driving.

1949 On July 28, 1949, Chapter 534, Laws of 1948-49 amended sec. 85.13 and introduced into Wisconsin law the concept of chemical analysis of

breath, blood, urine and saliva as evidence of drunk driving. This new law indicated that blood taken within two hours of arrest which contained (.15) fifteen-hundredths of one percent or more by weight of alcohol in blood could be admitted as prima facie evidence of intoxication, but there also needed to be corroborating evidence.

1957 Chapter 260, Laws of 1957, recodified the Motor Vehicle statutes. This law changed the statutory cite for drunk driving from s. 85.13 to s. 346.63(1), Stats. This statutory cite is where the drunk driving offense is still located. By 1957, the chemical test sections had moved to s. 325.235. Penalties in 1957 remained the same as they were in 1953. See s. 346.65(2), 1957 Wisconsin Statutes.

1969 Chapter 383, Laws of 1969, created Wisconsin's Implied Consent Law. Under the law, persons who operate motor vehicles on highways are deemed to have given their consent to submit to a chemical test upon request by a police officer.

1973 Chapter 102, Laws of 1973, changed the prima facie blood alcohol concentration from .15 to .10, but continued the requirement for the need of corroborating evidence. By 1973, the penalty for first offense no longer included the option of jail.

1981 Chapter 20, Laws of 1981, restructured Wisconsin's OWI law. This law created the offense of intoxication as a matter of law if the person has an alcohol concentration in excess of .1 or more; corroborating evidence is no longer required. It eliminated the ability of prosecutors to plea bargain OWI offenses to lesser offenses. It required alcohol assessment as a condition of sentence for every person convicted of OWI, and it established a surcharge fund for the purpose of helping to underwrite assessment and treatment.

1983 Chapter 74, Laws of 1983, created an Absolute Sobriety provision for persons under the legal drinking age. In this same legislation the legal drinking age was changed to age 19. When the legal drinking age was changed to 21 in 1985, the absolute sobriety provision was left at age 19. See sec. 346.63(2m), Stats.

1985 Wisconsin Act 337 raised the drinking age to 21 effective September 1, 1986 and made other changes in statutory rules associated with underage drinking.

1987 Chapter 3, Laws of 1987, created immediate (30 days after the violation) license suspension for six months (Administrative Suspension) for any person with an alcohol concentration of .1 or greater. This law became effective on January 1, 1988.

1989 Chapter 105, Laws of 1989, created new OWI statutory provisions for commercial vehicle operators. This law created an absolute sobriety provision for commercial motor vehicle operators, and reduced the alcohol concentration level to .04 for persons operating commercial motor vehicles. These provisions became effective on January 1, 1991.

1992 Chapter 277, Laws of 1991, created new penalties and treatment opportunities for OWI repeat offenders. This law included possible seizure of vehicles, increased penalty for Homicide by Intoxicated Use, an alcohol concentration of .08 for persons with two or more offenses, and easier access to treatment. The provisions of this law became effective on January 1, 1993.

1996 Act 127 amended and expanded the OWI laws to include offenses taking place on rental property and in employee parking lots. The law does not pertain to private parking areas on farms or single-family residences.

1999 Wisconsin Act 109 increased penalties for repeat offenders, lowered prohibited alcohol concentrations in some instances and expanded the ability for courts to use ignition interlock devices along with other substantive changes.

2001 Wisconsin Act 16 created a new set of repeat OWI penalties for 2 or more convictions in any five year period: a minimum one year revocation with no occupational licensing during that period; immobilization or IID required on all vehicles; seizure may be ordered on third or subsequent conviction. For the 2nd conviction, the court shall order five days in jail or at least 30 days of community service (this doubled community service time for 2nd offense). Increased the OWI surcharge by \$10 (from \$345 to \$355).

OWI AND RELATED ALCOHOL PENALTIES (EFFECTIVE FEBRUARY 1, 2003)

Conviction	Fine or Forfeiture ⁹	Jail	Suspension or Revocation	Occupational License ¹³	Assessment ⁵	Points ¹²
OWI, First ¹⁰ [346.63(1)(a),(b)] (Per se AC ≥ .10) [340.01(46m)(a)]	\$150-\$300 ⁶ [346.65(2)(a)] (plus \$355 OWI surcharge) [346.655]		6-9 month revocation ⁶ [343.30(1q)(b)2]	Immediately [343.30(1q)(b)2]	YES	6
OWI, Second ^{1,10} (Per se AC ≥ .10) [340.01(46m)(a)]	\$350-\$1,100 ⁶ [346.65(2)(b)] (plus \$355 OWI surcharge)	5 days to 6 months ⁶ [346.65(2)(b)]	12-18 month revocation ⁶ [343.30(1q)(b)3] Vehicle immobilized or equipped with IID ⁸	After 60 days ^{2,3} [343.30(1q)(b)3] After 12 months if 2 or more offenses within 5 years [343.307(1)]	YES	6
OWI, Third ^{1,10} (Per se AC ≥ .08) [340.01(46m)(b)]	\$600-\$2,000 ^{6,11} [346.65(2)(c)] (plus \$355 OWI surcharge)	30 days to 1 year ⁶ [346.65(2)(c)]	2-3 year revocation ⁶ [343.30(1q)(b)4] Vehicle immobilized or equipped with IID, or may be seized [346.65(6)(a)1] ⁸	After 90 days ^{2,3,9} [343.30(1q)(b)4] After 12 months if 2 or more offenses within 5 years	YES	6
OWI, Fourth ^{1,10} (Per se AC > .02) [340.01(46m)(c)]	\$600-\$2,000 ^{6,11} [346.65(2)(d)] (plus \$355 OWI surcharge)	60 days to 1 year ⁶ [346.65(2)(d)]	2-3 year revocation ⁶ [343.30(1q)(b)4] Vehicle immobilized or equipped with IID or may be seized ⁸	After 90 days ^{2,3} [343.30(1q)(b)4] After 12 months if 2 or more offenses within 5 years	YES	6
OWI, Fifth or more ^{1,10} (Per se AC > .02) [340.01(46m)(c)]	\$600-\$10,000 ¹¹ [346.65(2)(e)] [939.50(3)(h)] (plus \$355 OWI surcharge)	6 months to 6 years ⁷ imprisonment [346.65(2)(e)] [939.50(3)(h)]	2-3 year revocation ⁶ [343.30(1q)(b)4] Vehicle immobilized or equipped with IID or may be seized ⁸	After 90 days ^{2,3} [343.30(1q)(b)4] After 12 months if 2 or more offenses within 5 years	YES	6
Causing Injury ¹⁰ While OWI [346.63(2)(a)]	\$300-\$2,000 ^{9,11} [346.65(3m)] (plus \$355 OWI surcharge)	30 days to 1 year ⁶ [346.65(3m)]	1-2 year revocation ^{6,8} [343.31(3)(e)]	After 60 days [343.31(3m)(b)] After 12 months if 2 or more offenses within 5 years	YES	6
Causing Great ^{4,10} Bodily Harm by OWI [940.25(1)]	Up to \$25,000 ^{6,7,10,11} [939.50(3)(f)] (plus \$355 OWI surcharge)	Up to 12.5 years ^{6,7,10} imprisonment [939.50(3)(d)]	2 year revocation ^{6,7,8} [343.31(3)(f)]	After 120 days [343.31(3m)(a)] After 12 months if 2 or more offenses within 5 years	YES	6
Homicide While OWI ^{1,10} [940.09(1)]	Up to \$100,000 ^{6,7,10,11} [939.50(3)(c),(d)]	Up to 25 years or, ^{6,7,10} if one or more prior OWI-related offense, up to 40 years [930.50(3)(c),(d)]	5 year or 10 year revocation ⁸ [343.31(3)(c)] After 12 months if 2 or more offenses within 5 years	After 120 days [343.31(3m)(a)]	YES	6
Chemical Test Refusal (First) [343.305(9),(10)(b)2]			1 year revocation ⁶ [343.305(10)(b)2]	After 30 days [343.305(10)(b)2]	YES	0
Chemical Test Refusal (Second) ¹ [343.305(9),(10)(b)3]			2 year revocation ^{6,8} [343.305(10)(b)3]	After 90 days ³ [343.305(10)(b)3] After 12 months if 2 or more offenses within 5 years	YES	0
Chemical Test Refusal (Third or greater) ¹ [343.305(9),(10)(b)4]			3 year revocation ^{6,8} [343.305(10)(b)4]	After 120 days ³ [343.305(10)(b)4] After 12 months if 2 or more offenses within 5 years	YES	0
Administrative Suspension for Prohibited Alcohol Concentration [343.305(7)]			6 month suspension [343.305(7)(a)]	Immediately [343.305(8)(d)]	NO	0
Open Container (Driver) [346.935]	\$100 [346.95(2m)]					0
Open Container (Passenger) [346.935]	\$100 [346.95(2m)]					0

¹ Generally, second offenses are counted within a 10-year period. Third and subsequent are counted within an individual's lifetime dating back to 1/1/89. [346.65(2)(b)-(e), 343.305(10)(b)3-4, 1997 Wis. Act 237- s. 9348(26)]

The 10-year and lifetime periods are measured from the date of refusal or violation that resulted in conviction. [346.65(2)(c)]

² Absolute sobriety is mandatory for an occupational license for persons with two or more suspensions, revocations or convictions. [343.10(5)(a)(2), 343.307(1)]

³ Persons with 2 or more suspensions, revocations or convictions counted under 343.307(1), must complete assessment and be in compliance with a driver safety plan to be eligible for an occupational license. [343.10(2)(c), 343.30(1q)(b)3 and 4]

⁴ If repeat offender, court may immobilize, equip with an ignition interlock device (IID) or seize vehicle. [940.09(1d), 940.25(1d)]

⁵ Assessments of the offender's use of alcohol or controlled substances are required. [343.30(1q)(c)]

⁶ Fines, forfeitures, jail and revocation/suspension penalties are doubled for a person convicted of OWI when a person under 16 years of age was in the vehicle at the time of the offense. [346.65(2)(f) and (2j)(d), 343.30(1q)(b)4m, 343.305(10)(b)4m, 343.31(3)(f), 940.25(1)(bm)] For third and subsequent OWI offenses, fines are increased according to blood alcohol level. [346.65(2)]

⁷ Fines, forfeitures, jail, and revocations or suspensions are doubled if a pregnant woman is in the vehicle at the time the driver committed the offense. [343.31(3)(f)]

⁸ The vehicle owned by the offender and used in the offense may be immobilized or equipped with IID or the offender's operating privileges may be restricted to vehicles equipped with IID. [343.30(1)(a) and (2)(a)] For second or subsequent offenses, if there are 2 or more enumerated offenses committed within any 5 years such operating privilege restrictions are mandatory and all vehicles titled or registered in the offenders' name must be immobilized or equipped with IID. [343.30(1)(a) and (2)(a), 343.305(10m)] For third or subsequent the vehicle may be seized and forfeited. [346.65(6)(a)1]

⁹ Additional fees, assessments and surcharges will also apply.

¹⁰ If offense is committed while operating a commercial motor vehicle, then penalties will include a 1 year CDL disqualification (3 year disqualification if transporting hazardous materials, or lifetime disqualification for 2nd or subsequent OWI) [343.315(2)(a)(b)(c)] plus an \$8 truck driver education assessment. [349.04]

¹¹ For third or subsequent OWI offenses, fines are increased according to blood alcohol concentration. [346.65(2)(g)]

¹² For the scale of demerit points for all traffic violations, see Trans 101.02, Wisconsin Administrative Code, and 343.32(2); newly licensed drivers may be subject to increased demerit points. [343.32(2)(bc)]

¹³ Application can be made by persons whose operating privileges have been suspended or revoked to drive between home and work or school. [343.10]

SOURCE: DOT-Bureau of Transportation Safety; DOT-Office of General Counsel

UNDERAGE ALCOHOL OFFENSES AND RELATED PENALTIES (EFFECTIVE FEBRUARY 1, 2003)

Conviction	Fine or forfeiture ⁵	Driver License Suspension or Revocation	Supervised Work Program	Court Ordered Stay ¹	Assessment ¹
Absolute Sobriety "Not a Drop" Law (If under age 21) [346.63 (2m)]	\$10 ³ [346.65(2q) 3]	90 day license suspension [343.30(1p)] ³ Occupational- immediately	No	No	No
Underage Alcohol (Procure or Misrepresent Age) (age 17-20) [125.07(4)(a)] or local ordinance	1st: \$250-\$500 2nd in a year: \$300-\$500 3rd in a year: \$500-\$750 4th & subsequent in a year: \$750-\$1,000 [125.07(4)(bs)]	1st: 30-90 day ⁴ suspension 2nd: up to 1 yr. suspension ² 3rd & subsequent: up to 2 yr. suspension ² [343.30(6)(b)]	Yes-Court option as an alternative [125.07(4)(bs)]	Yes-Court option as an alternative [125.07(4)(e)2]	Optional [125.07(4)(e)2a]
Juvenile Alcohol (Procure or Misrepresent Age) (under 17) [125.07(4)(a)] or local ordinance	1st: \$250-\$500 2nd in a year: \$300-\$500 3rd & subsequent in a year: \$500 [938.344(2b)(a)-(c)]	1st: 30-90 day ⁴ suspension 2nd: up to 1 yr. suspension ² 3rd & subsequent: up to 2 yr. suspension ² [343.30(6)(b)]	Yes-Court option as an alternative [938.344(2b)]	Yes-Court option as an alternative [938.344(2g)(a)]	Optional [938.344(2g)(a)1]
Underage Alcohol (Possess or Consume) (age 17-20) [125.07(4)(b)] or local ordinance	1st: \$100-\$200 2nd in a year: \$200-\$300 3rd in a year: \$300-\$500 4th & subsequent in a year: \$500-\$1,000 [125.07(4)(c)]	1st: 30-90 day ⁴ suspension 2nd: up to 1 yr. suspension ² 3rd & subsequent: up to 2 yr. suspension ² [343.30(6)(b)]	Yes-Court option as an alternative [125.07(4)(c)]	Yes-Court option as an alternative [125.07(4)(e)2]	Optional [125.07(4)(e)2a]
Juvenile Alcohol (Possess or Consume) (under 17) [125.07(4)(b)] or local ordinance	1st: Up to \$50 2nd in a year: Up to \$100 3rd & subsequent in a year: up to \$500 [938.344(2)(a)-(c)]	1st: 30-90 day ⁴ suspension 2nd: up to 1 yr. suspension ² 3rd & subsequent: up to 2 yr. suspension ² [343.30(6)(b)]	Yes-Court option as an alternative [938.344(2)]	Yes-Court option as an alternative [938.344(2g)(a)]	Optional [938.344(2g)(a)1]
Underage False ID (Use or Possess) (age 17-20) [125.085(3)(b)]	\$300-\$1250 [125.085(3)(bd)]	30-90 days ⁴ [343.30(6)(bm)]	Yes-Court option as an alternative [125.085(3)(bd)]		
Juvenile False ID (Use or Possess) (under 17) [125.085(3)(b)]	1st: \$100-\$500 2nd in a year: \$300-\$500 3rd & subsequent in a year: \$500 [938.344(2d)(a)-(c)]	1st: 30-90 day ⁴ suspension 2nd: up to 1 yr. suspension ² 3rd & subsequent: up to 2 yr. suspension ² [343.30(6)(b)]	Yes-Court option as an alternative [938.344(2d)]	Yes-Court option as an alternative [938.344(2g)(a)]	Optional [938.344(2g)(a)1]
Intoxicants In Vehicle (Underage Persons) [346.93]	Not less than \$20 nor more than \$400 [346.93(2g)]	1st: 30 day - 1 yr. suspension 2nd: up to 1 yr. suspension ² 3rd & subsequent: up to 2 yr. suspension ² [343.30(2m),(6)(b)]	No	No	No

¹ Court may stay enforcement of the sentence if the defendant agrees, and in turn, the court may condition the stay on voluntary assessment and participation in a court-approved alcohol abuse education program or enrollment in a treatment program; however, the court may not stay, suspend or modify a mandatory drivers license suspension.

² Suspension is permissive for 1st offense, but mandatory for 2nd and subsequent offenses that involve a motor vehicle. [346.93 (2f), (2g)]

³ Forfeiture, costs and period of suspension are doubled when a person under 16 years of age was in the vehicle at the time of offense. [343.30(1p)]

⁴ If a person does not hold a valid license at the time of disposition, the suspension period begins when they first apply for a license or two years from the disposition. [343.30(6)(d)]

⁵ Additional fees, assessment and surcharges will also apply.

COMMENTS ON PENALTIES FOR UNDERAGE ALCOHOL OFFENSES

Persons whose licenses are suspended or revoked for underage drinking violations other than *Absolute Sobriety* are eligible for occupational licenses 15 days after the suspension or revocation begins. [343.10(2)(a)4] Those whose licenses are suspended for violating the *Absolute Sobriety* or "Not a Drop" law are eligible for occupational licenses immediately.

Like those of majority age, underage persons are subject to the provisions of Wisconsin laws prohibiting operating/driving motor vehicles while intoxicated. These laws include impairment/intoxication resulting from the use of illegal, over the counter or prescription drugs or combinations of drugs or alcohol. It is illegal in Wisconsin to operate snowmobiles, all-terrain vehicles, motor boats, aircraft and other motor vehicles while under the influence of alcohol or drugs or a combination of alcohol and drugs.

Underage Alcohol conviction records are largely confidential. The Department of Transportation may not disclose information concerning a suspension, revocation or restriction as a result of an underage alcohol conviction to any person other than a court, district attorney, municipal prosecuting attorney, law enforcement agency, the underage individual or his/her parents or legal guardian. [343.30(5), 343.24(3)]

SOURCE: DOT-Bureau of Transportation Safety; DOT-Office of General Counsel

COMMERCIAL DRIVER LICENSE ALCOHOL AND OTHER DRUG OFFENSES AND RELATED PENALTIES (EFFECTIVE FEBRUARY 1, 2003)

Violation in CMV	Fine/Forfeiture/Jail ³	Effect on CDL	Effect on Class D/M License	Occupational License (class D/M) ⁶
.04%-.09% AC ^{2,4} 1st Offense [346.63(5)]	\$150-\$300 forfeiture ^{1,8} [346.65(2j)(a)]	1 Yr Disq 3 Yr Disq if "H" [343.315(2)(a),(b)]	Subject to 24-hour license seizure ⁵ [343.305(7)(b)]	Yes (15 days) [343.10(2)(a)]
.04%-.09% AC ^{2,4} 2nd Offense	\$300-\$1,000 fine ^{1,8} 5 days-6 mo jail [346.65(2j)(b)]	Lifetime Disq [343.315(2)(c)]	Subject to 24-hour license seizure ⁵ [343.305(7)(b)]	Yes (15 days) [343.10(2)(a)]
.04%-.09% AC ^{2,4} 3rd or Subsequent Offense	\$600-\$2000 fine ^{1,8} 30 days-1 yr jail [346.65(2j)(b)]	Lifetime Disq [343.315(2)(c)]	Subject to 24-hour license seizure ⁵ [343.305(7)(b)]	Yes (15 days) [343.10(2)(a)]
.04%-.09% AC ² Causing Injury [346.63(6)]	\$300-\$2,000 ^{1,8} 30 days-1 yr jail [346.65(3m)]	1 Yr Disq/3 yr if "H" (life for 2nd offense) [343.315(2)(a),(b),(c)]	1 year revocation ¹ [343.31(1)(ar),(3)(a)]	Yes (15 days) [343.10(2)(a)4]
.04-.09% AC Causing Great Bodily Harm [940.25(1)(bm)]	Up to \$25,000 ^{6,7,10,11} up to 12.5 yrs jail [939.50(3)(d),(f)]	1 Yr Disq/3 yr if "H" (life for 2nd offense) [343.315(2)(a),(b),(c)]	2 year revocation ^{1,7} [343.31(3)(f)]	Yes (120 days, or if 2 or more offenses within 5 years, 1 year) [343.31(3m)(a)]
.04%-.09% AC Causing Death [940.09(1)(bm)]	Up to \$100,000 ^{6,7,10,11} up to 40 yrs jail [939.50(3)(c),(d)]	1 Yr Disq/3 yr if "H" (life for 2nd offense) [343.315(2)(a),(b),(c)]	5 or 10 year revocation [343.31(3)(c)]	Yes (120 days, or if 2 or more offenses within 5 years, 1 year) [343.31(3m)(a)]
Chemical Test Refusal ⁴ 1st Offense [343.305(9)(a),(am),(10)(b)2]		1 Yr Disq 3 Yr Disq if "H" [343.315(2)(a),(b)]	1 year revocation ¹ [343.305(10)(b)2]	Yes (30 Days) [343.305(10)(b)2]
Chemical Test Refusal ⁴ 2nd Offense (Within 10 years) [343.305(10)(b)3]		Lifetime Disq [343.315(2)(c)]	2 year revocation ¹ [343.305(10)(b)3]	Yes (90 days, or if 2 or more offenses within 5 years, 1 year) [343.305(10)(b)3]
Chemical Test Refusal ⁴ 3rd Offense (Within lifetime) [343.305(10)(b)4]		Lifetime Disq [343.315(2)(c)]	3 year revocation ¹ [343.305(10)(b)4]	Yes (120 days, or if 2 or more offenses within 5 years, 1 year) [343.305(10)(b)4]
Using a CMV to make, dispense, or distribute drugs illegally	Varies depending upon drug crime	Lifetime Disq [343.315(2)(e)]	1 year revocation [343.31(1)(c),(3)(a)]	Yes (15 days) [343.10(2)(a)4]
Any measurable alcohol concentration, possession of alcohol [346.63(7)], operation within 4 hours after consuming	\$10 [346.65(2u)(a)]	24 Hr Out of Service [346.65(2u)(b)] [343.315(2)(g)]		

¹ Fines, forfeitures, jail and revocation/suspension penalties are doubled for a person convicted of OWI when a person under 16 years of age was in the vehicle at the time of the offense. [343.30(1q)(b)4m and (3)(e), 343.305(10)(b)4m, 346.65(2j)(d),(2q)and(3m)] For third and subsequent regular OWI offenses, fines are also increased according to blood alcohol level. [346.65(2)(g)]

² If AC exceeds .10 or the prohibited alcohol concentration as defined in 340.01(46m), the offense is punishable under 346.63(1), with CDL disqualification under 343.315.

³ Additional fees, assessments and surcharges will also apply. 2001 Act 109 created an \$8 truck driver education assessment.

⁴ Prior offenses counted include injury or homicide by intoxicated motor vehicle use, and other OWI-related offenses committed after January 1, 1989.

⁵ License subject to 24-hour seizure if AC > 0.0.

⁶ No occupational license can authorize the operation of a commercial motor vehicle during the time of CDL disqualification.

⁷ Fines, jail penalties and revocation periods are doubled if a pregnant woman is present in the vehicle at the time of the offense. [343.31(3)(f), 940.09(1b), 940.25(1b)]

⁸ Plus OWI \$355 surcharge [346.655] and \$8 truck driver education assessment.

Note: Similar convictions in other jurisdictions may cause a driver to lose his or her Commercial Driver License.

CMV = Commercial motor vehicle

OWI = Operating while intoxicated

Disq = Disqualified (cannot drive CMV or get CDL-OCC)

OCC = Occupational license

CDL = Commercial driver license

AC = Alcohol concentration

"H" = Hauling hazardous materials at time of offense

NA = Not applicable

CASE LAW UPDATE

IMPLIED CONSENT LAW

State v. Nord, 2001 WI App 48, 241 Wis. 2d 387, 625 N.W.2d 302. The court of appeals held that the implied consent law adequately informs an accused of the consequences for consenting to or refusing to take a chemical test. The defendant claimed that the implied consent statute overstates the consequences for refusing a chemical test and understates the consequences for submitting to a chemical test. The court concluded that the statute identifies several consequences beyond license revocation that may result if a person refuses and the statute accurately informs that the test results could be used against the accused in court.

State v. Gibson, 2001 WI App 71, 242 Wis. 2d 267, 626 N.W.2d 73. The court of appeals held that the implied consent law does not restrict the police from using other constitutional means to collect evidence of a driver's intoxication. The defendant argued that because he initially refused to take the requested blood test that the only penalty for refusing should be the revocation of his operating privileges. However, the court reasoned that the implied consent law was designed to facilitate the collection of evidence against drunk drivers, not enhance the rights of alleged drunk drivers. Therefore, a driver accused of drunk driving does not have a right to refuse to submit to evidentiary testing.

TRAFFIC STOPS

State v. Rutzinski, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516. The Wisconsin Supreme Court held that an anonymous cell phone tip reporting a suspected drunk driver provided sufficient justification for an investigative stop. However, the court cautioned that not just any tip would suffice. Here, the court found the informant's tip reliable for the following reasons: (1) the caller exposed herself or himself to possible identification as well as possible arrest if the tip proved false; (2) the tip reported contemporaneous and verifiable observations of alleged erratic driving, the driver's location, and vehicle description; (3) the allegations were sufficient to suggest to a reasonable officer that the suspect was operating a vehicle while intoxicated; and (4) the exigency of the situation strongly weighed in favor of immediate police investigation.

State v. Haynes, 2001 WI App 266, 248 Wis. 2d 724, 638 N.W.2d 82. The court of appeals held that a Waukesha County officer was acting in his official capacity when he arrested defendant in Milwaukee County. Wisconsin law has recognized the need for police to make arrests outside their jurisdiction under certain circumstances; namely, when in fresh pursuit. Here, the officer met the following criteria necessary for fresh pursuit: (1) he acted without unnecessary delay; (2) his pursuit was continuous and uninterrupted; and (3) the time period between the violation, the start of the pursuit and defendant's apprehension was very short. Furthermore, once a justifiable stop is made, the scope of the officer's inquiry may be broadened if additional suspicious factors come to the officer's attention. Here, the strong odor of intoxicants, defendant's bloodshot and glassy eyes, slurred speech, and admission of drinking provided the additional suspicious factors to justify the officer's continued detention and investigation of defendant for the offense of drunk driving.

SEARCH AND SEIZURE

State v. Hart, 2001 WI App 283, 249 Wis. 2d 329, 639 N.W.2d 213. The law in Wisconsin is that the need to transport a person in a police vehicle is not, in and of itself, an exigency which justifies a search for weapons. Further, the lawfulness of a limited search for weapons or "frisk" may be based on whether the officer had a reasonable belief that the suspect was armed and dangerous. The record in this case offers no specific or articulable facts that would make a police officer reasonably fear for his or her safety. This case involved a routine traffic stop where the officer exercised his discretion not to arrest Hart for OWI, but chose to drive him to the police station where he could call for a ride home.

State v. Marquardt, 2001 WI App 219, 247 Wis. 2d 765, 635 N.W.2d 188. The court of appeals enunciated the criteria required under Wisconsin case law for the automobile exception to the search warrant requirement under the Fourth Amendment. Specifically, (1) whether there is probable cause to search a vehicle; and (2) whether the vehicle is readily mobile. Further, the court established that the automobile exception is not limited to vehicles in public places, but may extend to a vehicle parked in a private driveway.

BLOOD TEST ISSUES

State v. VanLaarhoven, 2001 WI App 275, 248 Wis. 2d 881, 637 N.W.2d 411. The defendant in this case voluntarily submitted to a blood test under the implied consent law. However, he argues that his blood sample could not be analyzed for evidentiary purposes without a search warrant. The court of appeals held that the chemical analysis of defendant's blood sample is not a separate event for which a search warrant is required.

State v. Wodenjak, 2001 WI App 216, 247 Wis. 2d 554, 634 N.W.2d 867. The court of appeals held that a defendant's request for a less invasive breath test and the availability of such a test did not deprive the officer of his authority to obtain a blood sample under *State v. Bohling*, 173 Wis. 2d 529, 494 N.W.2d 399 (1993). In *Bohling*, the Wisconsin Supreme Court held that a warrantless blood draw is permissible under the Fourth Amendment when (1) the police have a clear indication that the evidence they seek will be found in the suspect's blood; (2) exigent circumstances exist; and (3) the method used to take the blood is reasonable and is performed in a reasonable manner.

SOURCE: University of Wisconsin Law School Resource Center on Impaired Driving